



Federal Communications Commission
Washington, D.C. 20554

Corrected

September 6, 2002

KM Communications, Inc.
c/o Jeffrey L. Timmons, P.C.
3235 Satellite Boulevard
Building 400, Suite 300
Duluth, Georgia 30096-8688

Price Broadcasting, Inc.,
Logan 12, Inc.,
TV 6, L.L.C.,
Equity Broadcasting Corporation
c/o Peter Tannenwald, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W. Suite 200
Washington, D.C. 20036-3101

Re: Application to Assign Construction Permit, Channel 3, Price, Utah. File No. BAPCT-20011018AFQ, ID No. 84277; Application for License to Cover Construction Permit, KUTH(TV), Logan, Utah. File No. BLCT-20011128ABP, ID No. 69694; Application for Minor Modification of Construction Permit, KBCJ(TV), Vernal, Utah, File No. BMPCT-20001004AEE, ID No. 83729.

Dear Applicants:

This is in regard to the above referenced applications to: (1) assign the construction permit for a new television station on Channel 3 at Price, Utah (Price CP) from Channel 3, L.L.C. to Price Broadcasting, Inc. (PBI); (2) receive a license to cover the construction permit held by Logan 12, Inc., (Logan 12) for KUTH(TV), Channel 12, Logan, Utah; and (3) modify the construction permit held by TV 6, L.L.C. (TV6) for KBCJ(TV), Channel 6, Vernal, Utah. The three applicants have a common parent, Equity Broadcasting Corporation (EBC). An informal objection to the three applications was filed by KM Communications, Inc. (KM). For the reasons stated below, we deny the informal objection and grant the three applications.

In its petition to deny, KM asserts that EBC and its subsidiaries will violate the local multiple ownership rules in the Salt Lake City Designated Market Area (DMA). KM asserts that EBC through its subsidiaries will have an attributable interest in as many as five stations, all located in the Salt Lake City DMA. The five stations are the three that are the subject of the above applications, as well as an unbuilt station in Ely, Nevada (KBNY(TV)), whose construction permit is held by another EBC subsidiary, and another unbuilt station in Provo, Utah (File No. BPCT-19960404KX)(Provo CP).¹

¹ KM claims that EBC does not intend to operate KBNY(TV) as a noncommercial station because EBC's website at one time referred to commercial programming that might be carried on KBNY(TV). EBC denies that it intends to

EBC does not dispute that it has an attributable interest in the Price CP, KUTH(TV), KBCJ(TV), and KBNY(TV). However, EBC argues that it does not have an attributable interest in the Provo CP. In its opposition to the petition to deny, EBC states that several mutually exclusive applications were filed for a new commercial television station on Channel 32, Provo, Utah. EBC says that twelve of the applicants entered into a merger settlement agreement to resolve the exclusivity, giving each party an 8 1/3% interest in a new substitute permittee, Provo Broadcasting, LLC. According to EBC, one of the twelve merging applicants was KM and another was Kaleidoscope Partners, which was made up of Kaleidoscope Affiliates, LLC, whose members are existing principals of EBC, and Flinn Broadcasting Corporation (Flinn). EBC states that Flinn subsequently acquired 100% of Kaleidoscope Partners' interest in the application for the Provo station, leaving the EBC principals with no interest in the Provo CP at that time. *See Exhibit B, EBC Opposition, Declaration of Larry E. Morton, President of EBC at ¶ 2.*

EBC states that the parent of another member of the settlement group, Winstar Broadcasting Corporation (Winstar), subsequently filed for bankruptcy. EBC contends that in the context of that bankruptcy proceeding, Winstar assigned its economic interest in the Provo application to EBC, but that interest has never been delivered to EBC. EBC argues that it does not have an interest in the Provo CP at this time, but merely an unsatisfied claim to that interest. EBC further contends that, even if it did have an interest in the Provo CP, that interest would not be attributable because the Provo Broadcasting LLC agreement requires 80% of the members to concur in any action, thereby preventing EBC from implementing or blocking any action on its own. EBC claims that it has never attended any meeting of Provo Broadcasting LLC and has not voted its interest on any matter, and that it is totally insulated in fact from any of that permittee's affairs. EBC states that it has no desire to participate in the Provo CP and would accept a condition that, if the Winstar interest is ever delivered, it will accept a condition to either insulate its interest or to dispose of it prior to the Provo station's commencing operation under program test authority.

Even though Winstar's interest in the Provo CP may not have been actually delivered to EBC, EBC has received a right to that interest and has presumably given some sort of consideration for it. The fact that the Winstar interest to EBC has not been formally "delivered" to EBC or that EBC may be outvoted by other attributable owners in a given situation does not prevent attribution. Further, in its filings, EBC does not give any indication that its interest in the Provo CP meets any of the specified criteria for insulation from attribution. *See Review of the Commission's Regulations Regarding Attribution*, 14 FCC Rcd 12559 (1999). Therefore, we will treat EBC's interest in the Provo CP as fully attributable in our multiple ownership analysis.

The Commission's local television multiple ownership rule (duopoly rule) permits an entity to own, operate or control "two" commercial television stations in the same DMA if their Grade B contours do not overlap. 47 C.F.R. § 73.3555(b). If the Grade B contours of the stations do overlap, they may still be commonly owned, if eight independently owned and operating commercial and noncommercial television stations will remain in the DMA post-merger and at least one of the stations is not among the top four-ranked stations in the market. *Id.*

EBC acknowledges that the contours for KBJC(TV) and the Price CP overlap, but submits a showing that the Salt Lake City market contains more than eight independent voices and that the unbuilt Price CP has

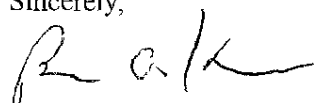
operate KBNY(TV) as anything but a noncommercial station and states that the information on its website has been removed. At this time, KBNY(TV) is not even on the air and KM's allegations are not adequate to raise a question regarding whether the future operation of the station will comply with the requirements for noncommercial stations.

no audience share. Apart from the Price CP, the KBJC(TV) Grade B contour does not overlap any of the other stations at issue here. Although there was a small overlap between the Grade B contours of the Price CP and KUTH(TV) at the time the pleadings were filed, we have since granted an unopposed modification application for the Price CP which eliminated that overlap. See File No. BMPCT-20020430AAF. The Price CP also has Grade B overlap with the Provo CP. Since the Price CP does have an overlapping Grade B contour with the Provo CP and KBCJ(TV), in which EBC has an attributable interest, this application to assign the Price CP, if granted, would create a combination in violation of our rules. Therefore, EBC must divest itself of its interest in one of the two overlapping stations before it can acquire the Price CP.

As discussed above, a party may have attributable interest in more than one television station in a DMA as long as the Grade B contours of those stations do not overlap. This is true without regard to the number of voices in that market. Stations KUTH(TV) and KBNY(TV) do not have Grade B overlap with each other or with any other stations in the Salt Lake City DMA in which EBC has an attributable interest. As a result, EBC may have an attributable interest in them without regard to its interests in the other stations at issue here. Moreover, KBNY(TV), as a noncommercial station, is beyond the purview of the duopoly rule.

Based on the above, we conclude that the applicants are qualified and that grant of the applications would be in the public interest, subject to EBC divesting itself of the necessary interests to eliminate the conflict with the multiple ownership rules that its ownership of the Price CP would create. Accordingly, it is ordered, that the petition to deny the above-referenced applications filed by KM Communications, Inc. IS DENIED.² It is further ordered, that the application to assign the construction permit for a new television station on Channel 3 at Price, Utah (Price CP) from Channel 3, L.L.C. to Price Broadcasting, Inc. IS GRANTED subject to Equity Broadcasting Corporation divesting itself of its interest in either the Provo CP or KBCJ(TV) prior to closing on the assignment. EBC shall file a report with the Chief, Video Division, Media Bureau that it has complied with this condition prior to closing.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

² The application to receive a license to cover the construction permit held by Logan 12, Inc., for KUTH(TV), Channel 12, Logan, Utah remains pending subject to further technical review. The application to modify the construction permit held by TV 6, L.L.C. (TV6) for KBCJ(TV), Channel 6, Vernal, Utah also remains pending subject to further technical review.